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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/073,643 05/06/98 MCKITTRICK

J 6339

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PM92/0420

EXAMINER

SHACKELFORD, H

ART UNIT

PAPER NUMBER

3671

DATE MAILED:

04/20/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/073,643

Applicant(s)

MCKITTRICK, JANIE

Examiner

H. Shackelford

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 13 March 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 8, 9, 12 and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Snyder.

3. Claims 1, 2, 4, 9, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by GB² 248,034. GB '034 discloses a rake (page 2, lines 14-15) having a generally short frame 4, a rigid brace 10, 14 for engaging the forearm and a handle 13 which is molded to the configuration of a user's hand, and extends generally transversely with respect to the longitudinal dimension of the frame member.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pereira in view of Pfister.

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Pereira discloses a cleaning tool having a frame member 42, 42' having a longitudinal design, a proximal end having a work implement, a generally rigid brace 44 at the distal end for engaging the forearm. A molded grip 36 which conforms to the configuration of a human hand is attached to the frame member intermediate the working element 100 and the brace 44 and the handle projects away from the frame member generally transverse with respect to the longitudinal dimension of the frame member 42, 42', whereby the handle and the brace enhance the downward force developed by the user. Also, the forearm engaging surface 46 is not in the same general plane as the frame member 42, 42'. The frame is deemed to have a "generally short longitudinal dimension." However, the tool is not a rake with tines.

Pfister discloses a rake with tines having a similar handle structure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the rake head as seen in Pfister to the handle of Pereira in order to provide leverage while digging or working soil. It would also be merely substituting a well known handle structure with another, which provides similar leverage and requires similar motion for using the attached tool. Such substitution of the handle structure would not deviate from the intended use or function of the tools of either Pereira or Pfister, and both would operate in a similar manner.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over GB '034 in view of Wiese.

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GB '034 is discussed above. However, an elastic cushion is not specifically disclosed on the forearm engaging portion.

Wiese teaches providing an elastic cushion 18 on a forearm brace.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a cushion on the forearm engaging portion as seen in Wiese to the rake device of GB' 034 to provide a more comfortable rest for the forearm. To provide padding wherever necessary on a tool to provide comfort and ease of operation, especially when the tool is used for a long period of time or handling a burdensome load would be considered obvious.

Applicant should note that the motivation for providing such structure need not be the same as that of applicant, as long as a viable motivation is provided.

7. Claim 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pereira in view of Pfister as applied to claims 1, 2, 4, 8, 9, and 11-13 above, and further in view of Wiese.

Pereira and Pfister are discussed above. However, an elastic cushion is not specifically disclosed on the forearm engaging portion.

Wiese discloses a similar tool requiring such leverage with a forearm engaging elastic cushion 18.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a cushion on the forearm engaging portion as seen in Wiese to the combined device of Pereira and Pfister to provide a more comfortable rest for the forearm. To provide

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padding wherever necessary on a tool to provide comfort and ease of operation, especially when the tool is used for a long period of time or handling a burdensome load would be considered obvious.

Applicant should note that the motivation for providing such structure need not be the same as that of applicant, as long as a viable motivation is provided.

8. Applicant's arguments with respect to claims 1-4, 7-13 have been considered but are moot in view of the new ground(s) of rejection.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to H. Shackelford whose telephone number is (703) 308-2978.



**H. SHACKELFORD
PRIMARY EXAMINER
GROUP 3600**

hcs
April 18, 2001